

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6789 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

=====

1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

AJAYSINH BISKITSINH BHADORIA

Versus

STATE OF GUJARAT

Appearance:

MS BANNA DATTA for Petitioner

MR JOSHI, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 17/11/1999

ORAL JUDGEMENT

#. The petitioner is a detenu, who came to be detained on 25th January, 1999, by virtue of an order passed by Commissioner of Police, Ahmedabad City, Ahmedabad, in exercise of powers under sub-section (2) of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), holding him to be a bootlegger and further holding that his activities have resulted into disturbance of public order.

#. The detention order was passed on 25th January, 1999 and the reasons for detention were also served on 25th January, 1999. The reasons for detention indicate that on 23rd January, 1999, an offence came to be registered against the petitioner with Odhav Police Station vide C.R. No.5009 of 1999 under Section 66-B, 65-E and 81 of the Bombay Prohibition Act. According to that complaint, 540 litres of country made liquor was seized from a Maruti Car which was occupied by the present petitioner as well as another person. The reasons for detention indicate that no other offences are registered against the petitioner. However, from the statements recorded, it is revealed, as recorded in the reasons for detention, that on 30th December, 1998, the witness was passing by Everest Cinema of Saraspur area of Ahmedabad in his motor vehicle when the petitioner asked for the vehicle for transporting liquor to which the witness denied. The petitioner, therefore, dragged him out of the vehicle and assaulted him. A crowd gathered over there, but nobody tried to rescue the witness out of the fear of the petitioner. The petitioner, thereafter drew a cut throat razor and rushed towards the crowd, which resulted into disturbance in the crowd and people started running about.

#. Likewise, similar incident was noticed on 5th January, 1999. According to another witness, the petitioner brought some quantity of liquor and asked the witness to keep the said quantity of liquor in his house which the witness denied. The petitioner, therefore, dragged him into the street and assaulted him. A crowd was gathered. The petitioner, therefore, drew out a knife and rushed towards the crowd. The crowd, therefore, started running in a haphazard way, which resulted into disturbance of the traffic.

#. The names of these witnesses are not disclosed claiming privilege under sub-section (2) of Section 9 of the PASA Act. The detaining authority verified the truthfulness in the statements of the witnesses and, ultimately, recorded the subjective satisfaction about the petitioner being a bootlegger and his activities involving and resulting in disturbance of public order and passed the order of preventive detention which is the subject matter of challenge in this petition.

#. Heard Ms. Banna Datta on behalf of the petitioner and Mr. Joshi, learned Assistant Government Pleader for the respondent-State.

#. It has been contended on behalf of the petitioner that the petitioner is made a scape goat and has been wrongfully detained. The events which are alleged to have taken place are only over a spell of two months. Only one offence is registered against the petitioner and, thereafter, the authorities have acted in an inconceivably fast manner. The offence that is registered is alleged to have occurred on 23rd January, 1999. On 24th January, 1999, the accused-petitioner was produced before the Magisterial Court and remand was sought. The Court rejected the application for remand and the petitioner was taken in judicial custody. On the same day statements of two witnesses were recorded whose names are not disclosed claiming privilege and on the very next day, i.e. on 25th January, 1999, the detention order is passed. The earlier two incidents are alleged to have occurred on 30th December, 1998 and in January 1999. It is, therefore, urged that the detaining authority has acted in a hasty manner. The detenu was under judicial custody when the order came to be passed. On the earlier day itself remand was rejected by a Court of law and there is no material disclosed for recording subjective satisfaction about the detenu being released on bail when there was not even an application for grant of bail. The authorities could have very well opposed the release of the petitioner on bail, as and when the application for bail came to be tendered. It was also contended that the time gap between the registration of offence, recording of statements and detention order is so narrow that the application of mind by the detaining authority appears to be doubtful. Reliance is placed on decision of this Court in the case of Kalidas Chandubhai Kahar v. State of Gujarat and Ors., as reported in 1993 (2) GLR 1659, wherein it has been observed that the detaining authority must have sufficient time to examine the need of exercising the power under sub-section (2) of Section 9. In that case, the proposal was made on 16th October, 1992 and the detention order was passed on 17th October, 1992 and it was held to be a wrong exercise of power under Section 9(2). It was, therefore, urged that in the instant case also, there is an allegation of only one day, which cannot be said to be a sufficient time lag for exercise of discretion by the authority under Section 9(2) of the PASA Act.

#. It is also contended that the satisfaction about the disturbance in public order is not well founded. There is nothing to indicate that there was disturbance in public order and, therefore, the subjective satisfaction of the detaining authority is vitiated.

#. Mr. Joshi, on the other hand, contended that the detaining authority has taken into consideration all relevant aspects and has satisfied himself about the genuineness, correctness and veracity of the incidents narrated by the witnesses in their statements in respect of unregistered offences and only thereafter, the order is passed. The detaining authority has categorically stated in the affidavit that he was subjectively satisfied that the detenu is a bootlegger and the public order is disturbed by his anti-social activities and, therefore, it was necessary to detain the petitioner under the provisions of PASA Act in order to prevent him from continuing such activity. Mr. Joshi, therefore, submitted that the petition may be dismissed.

#. Considering rival side contentions, the important aspect that catches attention is that the detaining authority has passed the order on 25th January, 1999. The only offence that is registered is dated 23rd January, 1999. The statements of the witnesses were recorded on 24th January, 1999. It is difficult to conceive as to when the authority verified the statements and satisfied itself about the genuineness, correctness and veracity of the incidents narrated in the statements of the witnesses and on what ground decided to claim privilege under Section 9(2) of the PASA Act. In case of Kalidas Chandubhai Kahar (supra), a Division Bench of this Court held that, where the proposal, was made on 16th October, 1992 and detention order was passed on 17th October, 1992, it was wrong exercise of power under Section 9(2) which affected the detenu's right of making an effective representation and, ultimately, held that the detention order was bad.

##. In this view of the matter, solely on the ground of improper exercise of powers under Section 9(2), the petition deserves to be allowed.

##. At this stage, Ms. Banna Datta states that she does not press other contentions raised by her.

##. In view of the above discussion, the petition deserves to be allowed and the impugned order deserves to be quashed and set aside.

##. In the result, the petition is allowed. The impugned order of detention dated 25th January, 1999 in respect of the petitioner-Ajaysinh Biskitsinh Bhadoria is hereby quashed and set aside. The petitioner-detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly

with no orders as to costs.

[A.L. DAVE]

gt